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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CHICAGO, ILLINOIS

November 8, 1993

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

Transmitted herewith is an original and four copies of
Comments, filed on behalf of MPX Systems, in response to the
Notice of Proposed Rule Making, released on October 8, 1993, in
In the Matter of Implementation of Sections 3(n) and 332 of the
Communications Act, Gen. Docket No. 93-252

Should you have any questions with regard to this pleading,
please contact Russell H. Fox of this office, or the undersigned
counsel.

Sincerely,


Susan H.R. Jones

cc: Chief, Land Mobile and Microwave Division, PRB
Chief, Mobile Services Division, CCB

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 3(n))
and 332 of the Communications Act) GN Docket 93-252
)
Regulatory Treatment of Mobile)
Services)

COMMENTS OF MPX SYSTEMS

INTRODUCTION

MPX Systems ("MPX"), a subsidiary of SCANA Corporation^{1/}, submits these comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") in In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, General Docket No. 93-252, released October 8, 1993. MPX urges the Commission, in adopting provisions to comply with the amendments to the Communications Act of 1934 ("Communications Act") made by the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), to recognize a specific category of "private mobile service" providers that function like MPX, offering wide-area interconnect communications service to others using

^{1/}SCANA Corporation, headquartered in Columbia, South Carolina is a \$3 Billion energy based holding company with eleven direct wholly owned subsidiaries engaged in electric and natural gas utility operations and related businesses.

frequencies dedicated to specialized mobile radio ("SMR") services, but only to a limited, non-public class of users.

MPX is a provider of a statewide wireless communications network in South Carolina. MPX ultimately intends to utilize a pool of 800 MHz frequencies, including those designated as SMR channels^{2/} to provide two-way, interconnect radio service to public safety, utility and government entities, on a wide-area basis across the state of South Carolina.

DISCUSSION

Section 332(d)(1) of the Communications Act, as revised by the Budget Act, provides that a mobile service will be classified as a "commercial mobile service" ("CMS") if it provides: (1) "interconnected" service "for profit," which is (2) available "to the public" or "such classes of users as to be effectively available to a substantial portion of the public." If both criteria are not met, the service is classified as a "private mobile service." Section 332(d)(3) of the Communications Act defines "private mobile service" as any mobile service that is not a "commercial mobile service" or the "functional equivalent" of a "commercial mobile service."

^{2/}In addition to SMR channels, MPX will employ frequencies designated for use in the Industrial/Land Transportation and Public Safety Pools, either as the licensee of those channels or as manager of those frequencies for eligible entities.

MPX urges the Commission, in drafting regulations to provide definitions for the two types of mobile communications service, to consider and make specific provision for services such as MPX that offer wide-area services using, among others, SMR channels, yet serve a non-public and very limited customer base. MPX urges the Commission to clarify that a service must satisfy both criteria in Section 332(d)(1) to be classified as a "commercial mobile service."

In distinguishing "commercial mobile services" from "private mobile services," the Commission must find that target service be widely available to the public. Accordingly, the Commission inquires whether a provider is precluded from being "effectively available to a substantial portion of the public" if its' customers are subject to "eligibility restrictions," or more broadly, whether a service should be deemed "effectively available" as long as it is accessible to a "large sector" of the public. The Commission seeks comments on how to measure the "availability to the public" criterion.

Accordingly, the Commission must distinguish between providers that truly restrict their market by limiting their customer base, and providers that have merely specified particular terms and conditions of subscription that can be availed by any potential subscriber. In footnote 31 to the NPRM, the Commission notes that a "customized," service

where a package of services is provided to customers through "individualized negotiation," will not be construed as unavailable to the public. MPX urges the Commission to adopt regulations that recognize the distinction between a provider limiting its customer base through elected negotiations, and a provider such as MPX where the eligibility requirements of its customers unavoidably limit and define the provider's marketplace.

MPX believes that the Commission should emphasize this distinction because it provides a clear line between vastly different services. MPX provides service to only a narrow group of public safety entities, not to any portion of the general public. The significant factor, therefore, in reviewing the MPX service and similar services for regulatory classification, is not the type of service it offers, but that the service is not "effectively available" to a "substantial portion of the general public." By narrowing their market as it has, MPX has significantly reduced its available customer base. Regulations adopted by the Commission in this proceeding should contemplate and provide guidelines to ensure that an entity such as MPX -- that offers wide-area service like that contemplated by the first criterion of the "commercial mobile service provider," yet offers that service only to a select community-- is appropriately categorized.

By focusing upon the breadth, or lack of, a provider's customer base to determine "commercial" or "private" classification, the Commission promotes the underlying Congressional intent of the Budget Act's amendments to the Communications Act. In significant measure, Congress meant this legislation to effect regulatory parity between cellular communications providers and other communications providers that compete with cellular, such as wide area SMRs. A provider such as MPX, therefore, which has curtailed its competitive market by restricting its eligible users to public safety entities, or an otherwise identifiable and restricted sector, has voluntarily withdrawn from the competitive wireless communications market and should not be regulated as its equal.


CONCLUSION

In adopting regulations that categorize mobile service providers for purposes of regulatory parity with cellular services, the Commission should implement a regulatory structure that grants MPX, and other communications service providers who have limited their customer base a position in the "private mobile service" category. The Commission is able to do so by upholding the second criteria of Section 332(d)(1) of the Communications Act and defining "general public" as not including specialized services for a limited category of eligible users.

WHEREFORE, THE PREMISES CONSIDERED, MPX Systems hereby submits the foregoing Comments and asks the Commission to act in a manner consistent with the views expressed therein.

Respectfully submitted,

MPX Systems

By: 

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Dated: November 8th, 1993

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